

Introduced by Senator Florez

February 20, 2003

An act to amend Section 9410 of the Government Code, relating to legislative committee hearings.

LEGISLATIVE COUNSEL'S DIGEST

SB 401, as introduced, Florez. Legislative investigations.

Existing law establishes procedures to be followed by the houses of the Legislature and their respective investigating committees to compel the appearance and testimony of witnesses, and the production of documents, in connection with legislative investigations.

Under existing law, when a witness asserts his or her privilege against self-incrimination of the Fifth Amendment to the United States Constitution before a house of the Legislature or an investigatory committee, the person presiding over the proceeding may instruct the witness to answer. If compelled to answer, notwithstanding an assertion of that privilege, the witness receives immunity from criminal prosecution, other than for perjury or contempt, as to any matter touching upon his or her testimony.

This bill would make various changes to clarify these procedures by which a witness may be compelled to give testimony or produce documents or other materials in a legislative proceeding despite an assertion of the privilege against self-incrimination, and thereby be granted immunity from criminal prosecution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 9410 of the Government Code is amended to read:

9410. (a) ~~Whenever a witness refuses, on the basis of~~ *If, in response to a question posed, or a command to produce documents or other materials issued, by the Senate, the Assembly, or a committee, a witness asserts his or her privilege against self-incrimination, to testify or provide other information before the Senate, Assembly, or a committee, and the person presiding over the proceeding directs* ~~communicates to the witness that the witness, notwithstanding that assertion of privilege, he or she is required to testify~~ *answer the question or produce the documents or other materials, the witness may not refuse to testify or produce the documents or other materials on the basis of his or her privilege against self-incrimination. However, the person cannot if a witness is compelled to testify or produce documents or other materials notwithstanding his or her assertion of the privilege against self-incrimination, as described in this subdivision, both of the following shall apply:*

(1) *The witness may not be held to answer criminally or be subject criminally to any penalty or forfeiture for any fact or act touching which he or she is required to testify. No statement made or paper produced by upon either testimony that he or she was so compelled to provide, or documents or other materials that he or she was so compelled to produce.*

(2) *Any testimony or documents or other materials that the witness is so compelled to provide shall not be competent evidence in any criminal proceeding against the witness except in a prosecution for perjury or contempt.*

(b) ~~A person may be sworn to testify under penalty of perjury without the immunity conferred pursuant to subdivision (a), if all the following conditions are met:~~

(1) ~~The following statement is read or otherwise communicated to the person:~~

~~“Section 9410 of the Government Code provides that a person sworn and examined before the Senate, Assembly, or a legislative committee cannot be held to answer criminally or be subject criminally to any penalty or forfeiture for any fact or act touching~~

1 ~~which he or she is required to testify, other than for perjury~~
2 ~~committed in testifying or contempt.~~

3 ~~“However, this committee (or house, if applicable) will not~~
4 ~~require your testimony. The committee (house) does not wish to~~
5 ~~be placed in a position where it can be claimed that you received~~
6 ~~immunity from any possible criminal prosecution because of your~~
7 ~~testimony before the committee (house).~~

8 ~~“Because you are not being given immunity from criminal~~
9 ~~prosecution, you have a constitutional right to refuse to testify~~
10 ~~before this committee (house). If you desire to waive this right and~~
11 ~~to testify voluntarily, you will be given that opportunity subject to~~
12 ~~all the following conditions:~~

13 ~~(A) “If you do not wish to answer any question, you will so~~
14 ~~state.~~

15 ~~(B) “In the absence of such a statement, your answer to each~~
16 ~~question will be entirely voluntary.~~

17 ~~(C) “If you choose to testify, you will be sworn under oath and~~
18 ~~will be therefore subject to criminal prosecution for perjury~~
19 ~~committed in testifying.~~

20 ~~“If you choose to so testify voluntarily, you are reminded that~~
21 ~~any self-incriminating statements you make can be used against~~
22 ~~you in criminal proceedings.”~~

23 ~~(2) After the statement quoted in paragraph (1) is~~
24 ~~communicated to the witness, he or she answers the following~~
25 ~~questions in the affirmative:~~

26 ~~“Do you understand these statements regarding your rights~~
27 ~~before this committee (house)?”~~

28 ~~“Do you wish to testify voluntarily under the conditions~~
29 ~~presented?”~~

30 ~~(e) The consent to testify and subsequent testimony pursuant to~~
31 ~~paragraph (1) of subdivision (b) constitute a knowing waiver of the~~
32 ~~person’s constitutional privilege against self-incrimination. In the~~
33 ~~case of a subpoena that requires a witness to produce documents~~
34 ~~or other materials but does not require the witness to personally~~
35 ~~appear, the witness under subpoena may assert his or her privilege~~
36 ~~against self-incrimination only by communicating an assertion of~~
37 ~~the privilege to the President pro Tempore of the Senate, if the~~
38 ~~subpoena was issued by the Senate, the Speaker of the Assembly,~~
39 ~~if the subpoena was issued by the Assembly, or the chair of the~~
40 ~~committee, if the subpoena was issued by a committee. The Senate,~~

1 *the Assembly, or committee, as the case may be, may compel the*
2 *witness to produce the documents or materials notwithstanding the*
3 *privilege against self-incrimination as to those documents or other*
4 *materials only by (1) issuing a subsequent subpoena calling for the*
5 *witness to personally appear; (2) upon that appearance, asking the*
6 *witness whether he or she continues to assert the privilege, and, if*
7 *so, (3) directing the witness that, notwithstanding that assertion of*
8 *privilege, he or she is required to produce the documents or other*
9 *materials called for by the subpoena as to which that assertion of*
10 *privilege was made.*

11 *(c) Immunity is conferred upon a witness pursuant to this*
12 *chapter only if the witness is compelled, as specified by this*
13 *section, to testify or produce documents or other materials*
14 *notwithstanding the assertion of the constitutional privilege*
15 *against self-incrimination.*

